

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TAMMY BYNUM INTEREST,
INC.

Plaintiff / Counter-Defendant,

v.

RYAN COMPANIES US, INC.

Defendant / Counter-Plaintiff.

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CIVIL ACTION NO. 4:16–CV–1005

NOTICE OF DISMISSAL OF COUNTERCLAIM WITHOUT PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41, Defendant / Counter-Plaintiff, RYAN COMPANIES US, INC. (“Ryan”), files this notice of dismissal without prejudice of its counterclaim against Plaintiff / Counter-Defendant, TAMMY BYNUM INTEREST, INC. (“TBI”). In support, Ryan respectfully submits the following:

1. The Court recently entered an Order dismissing without prejudice all of the claims and causes of action asserted by TBI against Ryan in this case [Dkt. 22]. In that regard, the only claims and causes of action that remain are those asserted in Ryan’s counterclaim against TBI.

2. In particular, on September 30, 2016, Ryan filed *Ryan Companies US, Inc.’s Amended Answer and Original Counterclaim* asserting various claims and

causes of action against TBI [Dkt. 10]. TBI was served with Ryan's counterclaim through its counsel of record.

3. As of the filing of this Notice, TBI has not filed and/or served: (1) an answer to Ryan's counterclaim; or (2) a motion for summary judgment on any part of Ryan's counterclaim. *See* FED. R. CIV. P. 41 (c)(1). Likewise, as of the filing of this Notice, no evidence has been introduced at a hearing or trial. *See* FED. R. CIV. P. 41 (c)(2).

4. Considering the dismissal Order entered by the Court [Dkt. 22], Ryan no longer desires to prosecute its counterclaim against TBI. In that regard, Ryan is filing this Notice with the intent to dismiss its counterclaim against TBI *without prejudice* to Ryan's right to refile. *See* FED. R. CIV. P. 41 (a)(1)(A)(i) and 41 (c).

5. Under these circumstances, Rule 41 provides Ryan the right to dismiss its counterclaim without further order from the Court. If, however, the Court requires an order then Ryan requests the Court enter an order of dismissal which is consistent with this Notice. And, to the extent necessary, Ryan requests the Court grant it all further relief to which it may be entitled as a matter of law or equity, or which the Court determines is just and proper.

[signature block on following page]

Submitted respectfully,

ANDREWS MYERS, P.C.

3900 Essex Lane, Suite 800
Houston, TX 77027
Tel: (713) 850-4200
Fax: (713) 850-4211

By: /s/ William B. Davis
William B. Davis (attorney-in-charge)
TBN: 24067569
Fed. Bar No.: 1010783
wdavis@andrewsmyers.com

ATTORNEYS FOR DEFENDANT /
COUNTER-PLAINTIFF, RYAN
COMPANIES US, INC.

OF COUNSEL:

Timothy C. Ross
TBN: 24056231
Fed. Bar No.: 704790
ANDREWS MYERS, P.C.
3900 Essex Lane, Suite 800
Houston, TX 77027
Tel: (713) 850-4200
Fax: (713) 850-4211
tross@andrewsmyers.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Dismissal of Counterclaim Without Prejudice* has been served on all known counsel of record in accordance with Rule 5, Federal Rules of Civil Procedure. Dated: March 15, 2017.

William E. Harrison
HARRISON & DIETRICH, PLLC
215 Simonton
Conroe, TX 77301
Tel: (936) 828-3898
Fax: (936) 828-3965
conroeattorney@yahoo.com

*Attorney for Tammy Bynum
Interest, Inc.*

/s/ William B. Davis

William B. Davis